2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons

European Union common approach

Working Paper submitted by Luxembourg on behalf of the European Union

I. Article X

1. Article X, paragraph 1, of the Treaty on the Non-Proliferation of Nuclear Weapons provides that "Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests".

2. While each State Party has a sovereign right to withdraw from the Non-Proliferation Treaty, the consequences of a withdrawal need to be clarified.

II. Legal requirements

3. The Review Conference could reiterate the following understanding of the obligations contained in article X:

(a) A "notice of withdrawal" has to be given in writing, the usual format being a note verbale to the governments of all States Parties to the Treaty and the President of the Security Council;

(b) This note verbale has to be given three months in advance of an intended withdrawal and shall include the statement of the required extraordinary events the country regards as having jeopardized its supreme interests; the statement should be as detailed and specific as possible;

(c) The three-month period starts with the date of transmission of the note verbale to the governments of all States Parties to the Treaty and the President of the

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Security Council. Any other declarations, public statements or letters of intention are in no way valid to shorten this period.

III. Implementing article X

4. The Review Conference should reiterate the following principles and examine the following measures:

(a) In the event that a State Party makes known its intention to withdraw from the Treaty under the provisions of article X, paragraph 1, request Depository States to begin immediately a consultation process of interested parties to explore ways and means to address the issues raised by the notification of intent, **taking also into account the state of compliance of the notifying party with its safeguards undertakings as assessed by IAEA**. Such notification would also prompt the depositories of the Treaty to consider the issue and its implications as a matter of urgency;

(b) Reiterate the key role of the Security Council as the final arbiter in maintaining international peace and security. Affirm that given the importance of the Treaty on the Non-Proliferation of Nuclear Weapons for international peace and security, a withdrawal notification under article X, paragraph 1, should be qualified as being of immediate relevance to the Security Council. Request that any withdrawal notification under article X, paragraph 1, prompt the Security Council to consider this issue and its implications as a matter of urgency, including examination of the cause for the withdrawal, which according to the requirements of article X has to be "related to the subject matter of the Treaty";

(c) Request that the Security Council further declare that, in case of a withdrawal notification under article X, paragraph 1, its consideration will include the matter of a special IAEA inspection of the notifying party.

IV. Effects of withdrawal

5. The Review Conference should reiterate the following principles and examine the following measures:

(a) Reiterate the principle whereby a State will remain internationally liable for violations of the Treaty committed prior to withdrawal;

(b) Affirm that the premeditation and the preparation of the withdrawal decision with a view to conducting a military nuclear programme constitute a violation of the objectives of the Treaty;

(c) Affirm that a withdrawal from the Treaty could in a given case constitute a threat to international peace and security;

(d) Affirm as a matter of principle that **all** nuclear materials, equipment, technologies and facilities, developed for peaceful purposes, of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons remain, in case of a withdrawal from the Treaty, restricted to peaceful uses only and as a consequence have to remain subject to safeguards;

(e) Affirm, without prejudice to any other measure likely to be decided by the Security Council, that as a matter of principle, a State withdrawing from the Treaty should no longer use nuclear materials, facilities, equipment and

technologies acquired from a third country prior to withdrawal; and that such nuclear facilities, equipment and materials must be frozen, with a view to having them dismantled and/or returned to the supplier State, under IAEA control. Steps to that end should be envisaged as soon as a withdrawal notification is issued;

(f) Request also that a clause prohibiting the use of transferred items in the event of a withdrawal be included in intergovernmental agreements defining the modalities for transfers of sensitive nuclear goods (enrichment, reprocessing) or for large-scale transfers;

(g) Request that the possibility for IAEA to continue implementing safeguards and, where relevant, certain Additional Protocol provisions, on all nuclear materials, facilities, equipment and technologies initially developed for peaceful purposes, during an indefinite period following a withdrawal, be examined.